IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 14821 of 2005(M)

PETITIONER:

T. GOPALAKRISHNAN,
MOHANA METALS AND VESSELS, KOZHENCHERRY MURI AND VILLAGE, KOZHENCHERRY TALUK, PATHANAMTHITTA.

BY ADV. SRI.JACOB P.ALEX

RESPONDENTS:
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1. ACCOMMODATION CONTROLLER (TAHSILDAR, KOZHENCHERRY).

2. SMT. P.K. DEVAKIAMMA,
NALLANTHODATHU HOUSE, KOZHENCHERRY,PATHANAMTHITTA.

3. DR. SHINY MATHEW,
SOUTHERN HOMOEO CLINIC, KOZHENCHERRY, PATHANAMTHITTA.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.LIJU.V.STEPHEN
GOVERNMENT PLEADER SRI. LAKSHMI NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C) NO: 14821/2005 M

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE APPLICATION DT. 19/11/2003.

EXT.P2. COPY OF THE ORDER PASSED ON 21/12/2004.

RESPONDENT'S EXHIBITS

NIL.

True copy

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.14821 of 2005-M

Judgment

Balakrishnan Nair, J.

The petitioner is a tenant under 2nd respondent. He, along with the third respondent moved the Accommodation Controller under Section 17 of the Kerala Buildings (Lease and Rent Control) Act, 1965 by filing Ext.P1 complaint, praying for a direction to the 2nd respondent herein, the owner of the shop rooms to carry out necessary maintenance to the wall on the western side of the building within a reasonable time. They also prayed for a direction to attend to the repair work if the landlord does not do that and adjust the costs and charges with 6% interest from the rent payable by them. The 1st respondent Accommodation Controller considered the petition and rejected it by Ext.P2 on the ground that the building concerned is very old and beyond repairs. This Writ Petition is filed challenging Ext.P2 on the ground that the said order is issued in violation of Rule 13 of the Rules framed under the Act. The procedure prescribed therein has not been followed. The decision has been arrived at in violation of the principles of natural justice also, it is submitted.

2. The learned Government Pleader appearing for the first respondent submitted that though notice was issued to both sides, no one appeared. So, the first respondent made a local inspection and passed Ext.P2 order. The learned counsel for the 2nd respondent submitted that later, the RDO initiated proceedings under Section 133 Cr.P.C. on the ground that the building is in a dangerous condition and ordered to demolish the same. On the revision filed by the petitioner herein, the said order was reversed by the Sessions Judge and the matter was remitted to the RDO. If ultimately, the building is going to be demolished, the repair work if any carried out will be a futile exercise, it is submitted. The learned counsel for the petitioner in answer would submit that the proceedings under Section 133 can have no impact on the right of the tenant under the provisions of the Act.

3. Going by Ext.P2, we are of the view that it cannot be treated as an order contemplated under Section 17. An order under Section 17 should briefly state the contentions of both sides, the evidence if any tendered in support of the same and the views of the Accommodation Controller on them. Further, a

quasi judicial order should be passed in conformity with the principles of natural justice. If the petitioner and the respondents did not appear, the Accommodation Controller could have adjourned the proceedings, issuing fresh notice to them instead of proceeding to dispose of the matter on merits. Since we find that Ext.P2 is not issued in conformity with the relevant provisions of the Act and Rules, it is quashed. Ext.P1 is remitted to the 1st respondent for fresh disposal in accordance with law. The same, he shall do with notice to both sides, preferably within two months from the date of receipt of a copy of this Judgment. If the RDO orders demolition of the building, the repair is going to be a futile exercise. Therefore, the parties shall bring to the notice of the 1st respondent, the present stage of the proceedings under Section 133 Cr.P.C, pending before the RDO. While passing orders, the said

respondent will have due regard to the said proceedings before the RDO.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

12.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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